

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MOHAMED SALAT HAJI,
a/k/a SALAMUJAHID ALMUHAJIR, and
MOHAMUD ABDIKADIR MUSE,
a/k/a ABU OSAMA ALMUHAJIR,

Defendants.

No. 1:19-CR-025

Hon. Gordon J. Quist
United States District Judge

NOTICE OF SUPPLEMENTAL AUTHORITY

The United States hereby notifies the Court of pertinent and significant authority that has come to its attention since the filing of its Government Response (PageID.484) to the Defense Motion to Allow Defense Counsel at CIPA Section 2 Hearing (PageID.469).

In *United States v. Asgari*, Nos. 19-3648 / 3657, __ F.3d __, 2019 WL 4894345 (6th Cir. October 4, 2019) (copy attached), the Sixth Circuit reversed the district court's order requiring the government to disclose classified information to defense counsel possessing a security clearance, holding that the order was inconsistent with Section 4 of the Classified Information Procedures Act (CIPA), 18 U.S.C. app. 3 § 4. In conducting CIPA Section 4 review of classified information the government seeks to withhold from discovery, a district court "steps into 'the shoes of defense counsel, the very ones that cannot see the classified record, and act[s] with a view to their interests.'" *Id.* at *4-5 (quoting *United States v. Amawi*, 695 F.3d 457, 469-70 (6th Cir. 2012)). "Nothing in [CIPA Section] 4 suggests that defense counsel has a role to play when the district court assesses the relevance or helpfulness of the classified information. Just the opposite." *Id.* at *5-6. *Asgari* observed that Section 4 expressly provides for *ex parte* review of

a CIPA Section 4 motion and accompanying materials, and requires the district court to seal the government's submission if the court finds that the classified material is irrelevant and unhelpful to the defense.

Respectfully submitted,

ANDREW BYERLY BIRGE
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Dated: October 7, 2019

/s/ Clay M. West
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